

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0524

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

M.C. LAND COMPANY  
KERN, KINGS, AND TULARE COUNTIES

This Complaint is issued pursuant to California Water Code section 13323 to M.C. Land Company (or "Discharger") for failing to submit a Report of Waste Discharge ("RoWD") required under Water Code section 13260.

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board" or "Board") alleges the following:

**BACKGROUND**

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or has the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (Wat. Code, § 13050(e).) The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state. (Wat. Code, § 13263.)
2. Attachment E of the Waste Discharge Requirements General Order for Growers within the Tulare Lake Basin Area are Members of the Third-Party Group (Order R5-2013-0120) defines "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Kern County, including M.C. Land Company, which were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program ("FMMP") land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued requiring property owners to obtain regulatory coverage for commercial irrigated lands.

5. Evaluation of county assessor and FMMP data indicates that M.C. Land Company owns approximately 160 acres of agricultural land in Kern County (Assessor's Parcel Numbers (APN) 520-170-02, 520-170-03, 520-170-04, 520-170-05, 520-170-06, 520-170-07, and 520-170-14). The Discharger also owns approximately 160 acres in Tulare County (APN 042-070-003) and 160 acres in Kings County (APN 014-060-038, 014-060-058, and 014-060-059). Inspection results and pesticide use reporting suggest the crops in production include 320 acres of almonds, 80 acres of pistachios, and 80 acres of alfalfa for a total of approximately 480 acres of irrigated cropland. Central Valley Water Board staff, the Kern River Watershed Coalition Authority, and the Kings River Water Quality Coalition confirmed that the aforementioned parcels are not covered in the Irrigated Lands Regulatory Program.
6. On 21 March 2014 and 11 July 2014, the Central Valley Water Board issued notices to M.C. Land Company for their parcels in Kern County describing new water quality regulations and actions available to comply with the regulations. Notices were also sent to M.C. Land Company on 21 February 2014 and 28 April 2014 for their parcels in Tulare and Kings Counties. All of the notices were sent to the most current address available on Parcel Quest. M.C. Land Company did not obtain regulatory coverage and did not contact the Board in response to the notices.
7. On 29 January 2015, Board staff found evidence of a commercial irrigated agricultural operation based on roadside observations of Kern County APNs 520-170-02, 520-170-03, 520-170-04, 520-170-05, and 520-170-14. Aerial photo inspections were also conducted on 11 May 2015 for APNs 520-170-06 and 520-170-07. Copies of the inspection reports are provided as Attachment A. Other inspection results of M.C. Land Company's irrigated cropland in Tulare and Kings Counties are described in Finding 15.
8. On 19 February 2015, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter ("Directive") to M.C. Land Company, sent via certified mail. The Directive stated that, based on information available to the Central Valley Water Board, M.C. Land Company owned parcels in Kern County with irrigated cropland, which were subject to new regulations. The Directive was sent based on evidence of commercial irrigated lands documented by roadside photographs (See Attachment A). A copy of the Directive is provided as Attachment B.
9. The Directive required M.C. Land Company to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, M.C. Land Company could comply by joining the appropriate Coalitions (e.g., Kern River Watershed Coalition Authority), or by submitting a RoWD to obtain coverage under the Individual Order (R5-2013-0100).
10. The certified mail receipt for the Directive issued to M.C. Land Company indicates the letter was received on 27 February 2015. A copy of the certified mail receipt for the Directive is included with the Directive in Attachment B.
11. On 12 March 2015, Staff received a letter from M.C. Land Company requesting exemption from the program because their land in Kern County used a tail pit return system that resulted in no waste water being discharged from their orchard. On 24

March 2015, Staff sent an email response stating that because there was still potential to discharge to waters of the state, the parcels would require regulatory coverage. M.C. Land Company did not respond to the email or obtain coverage by the 14 March 2015 deadline. A copy of the letter and email response is provided as Attachment C.

12. Because the Discharger failed to obtain coverage by the 14 March 2015 deadline specified in the Directive, a Notice of Violation ("NOV") was sent via certified mail to M.C. Land Company on 7 April 2015. A copy of the NOV is provided as Attachment D.
13. The certified mail receipt for the NOV issued to M.C. Land Company indicates the NOV was received on 9 April 2015. A copy of the certified mail receipt for the NOV is included with the NOV in Attachment D.
14. M.C. Land Company neither obtained regulatory coverage nor contacted the Board in response to the NOV.
15. On 11 May 2015, Board staff found evidence of commercial irrigated agricultural operations based on roadside observations of M.C. Land Company's Kings County APNs 014-060-038, 014-060-058, and 014-060-059. An aerial photo inspection was also done for Tulare County APN 042-070-003. As noted in Finding 5, these parcels have not been enrolled in the Irrigated Lands Regulatory Program. The inspection reports are provided as Attachment E.
16. At the time of issuance of this Complaint, Board staff had not received a Notice of Intent ("NOI") from M.C. Land Company for coverage under the Waste Discharge Requirements General Order for Growers within the Tulare Lake Basin Area that are Members of a Third-Party Group (Order R5-2013-0120 or TLBA General Order) or a RoWD to obtain coverage under the Individual Order (Order R5-2013-0100).

### **ALLEGED VIOLATIONS**

17. M.C. Land Company failed to submit a RoWD as required by Water Code section 13260. The Water Code section 13260 Directive Letter issued to M.C. Land Company requires either submittal of a NOI to comply with the RoWD requirements of the Individual Order or submittal of a NOI to comply with the RoWD requirements of the TLBA General Order and join a Third-Party Group (Coalition). As of 14 May 2015, M.C. Land Company's NOI is 61 days past due.

## REGULATORY CONSIDERATIONS

18. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
19. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Board a RoWD containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Discharger's lands are located.
20. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Water Code section 13260 when so requested by a Regional Board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
21. Water Code section 13261, subdivision (b)(1), states that civil liability may be administratively imposed by a Regional Board or the State Water Resources Control Board ("State Water Board") for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs.
22. The required NOI to comply with the RoWD requirements was due 14 March 2015. As of the date of this Complaint, the NOI is 61 days past due. The maximum liability under Water Code section 13261, subdivision (b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of sixty one thousand dollars (\$61,000).
23. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
24. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.

25. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment F. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
26. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2013-0120 identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.
27. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$61,000. The Enforcement Policy requires that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to enroll under Central Valley Water Board Order R5-2013-0100 is estimated at \$2,869 (see Attachment F for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$3,156).
28. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
29. Issuance of this Administrative Civil Liability Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

**M.C. LAND COMPANY IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Regional Water Board proposes that M.C. Land Company be assessed **an administrative civil liability in the amount of fifty one thousand eight hundred seventy dollars (\$51,870).**
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **30/31 July 2015.**
3. The hearing may be delayed if the Discharger submits a waiver (Attachment H), and requests either to enter settlement discussions or to delay the hearing based on sufficient justification.
4. During the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
5. The Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.

*Original signed by:*

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Clay Rodgers, Assistant Executive Officer

5/14/2015

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(Date)

Attachment A: 29 January 2015 and 11 May 2015 Kern County Inspection Reports  
Attachment B: 19 February 2015 California Water Code section 13260 Directive  
Attachment C: 12 March 2015 M.C. Land Company Letter and 24 March 2015 Email Response  
Attachment D: 7 April 2015 Notice of Violation  
Attachment E: 11 May 2015 Second Inspection Report  
Attachment F: Calculation of Penalty per SWRCB Water Quality Enforcement Policy  
Attachment G: Hearing Procedures  
Attachment H: Waiver Form  
Attachment I: Administrative Civil Liability Fact Sheet